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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

NEWMARK GROUP, INC., G&E )  
ACQUISITION COMPANY, LLC, and )  
BGC REAL ESTATE OF NEVADA, LLC, )

CASE NO.: 2:15-cv-00531-RFB-EJY

**STIPULATION REGARDING  
DISCLOSURE OF  
ELECTRONICALLY STORED  
INFORMATION**

AVISON YOUNG (CANADA) INC.; AVISON )  
YOUNG (USA) INC.; AVISON YOUNG - )  
NEVADA, LLC, MARK ROSE, THE NEVADA )  
COMMERCIAL GROUP, JOHN PINJUV, and )  
JOSEPH KUPIEC; DOES 1 through 5; and ROE )  
BUSINESS ENTITIES 6 through 10

1 The undersigned parties, through their respective counsel, stipulate and agree to the terms  
2 set forth in this stipulation regarding disclosure of electronically stored information (“Order”):

3 **1. DEFINITIONS**

4 The following terms in this Order will have the agreed-upon meanings set forth below:

5 (a) **Custodian**: “Custodian” means a person who has custody and control over  
6 electronic information.

7 (b) **Source**: “Source” means all locally accessible physical devices and cloud-based  
8 accounts designed to store, transmit or otherwise interact with electronic information. Examples  
9 of “Sources” include, but are not limited to, forensic image files, desktop computers, laptop  
10 computers, smartphones, file servers, USB drives, DVDs, third party email accounts, social media  
11 accounts, and third party cloud file storage services.

12 (c) **Data**: “Data” means electronic information.

13 (d) **Deduplication (“Deduping”)**: “Deduplication” means the process of comparing  
14 electronic records based on their MD5 Hash Value or equivalent and removing and identifying, to  
15 the extent possible, duplicate records within the data set.

16 (e) **Document Number**: “Document Number” means a legible, unique page identifier.  
17 Each file must be unique and match the Bates number of the page. The file name should not contain  
18 any blank spaces and should be zero padded (for example ABC0000001).

19 (f) **Documents of Limited Accessibility**: “Documents of Limited Accessibility” are  
20 Data that are not reasonably accessible and may include Electronic Information created or used by  
21 electronic media no longer in use, maintained in redundant electronic-storage media, or for which  
22 retrieval involves substantial cost.

23 (g) **Electronic Information**: “Electronic Information” means information stored in  
24 electronic media, including network drives and email servers.  
25  
26  
27  
28

1           **(h)     Email:** “Email” means an electronic means for communicating information under  
2 specified conditions, generally in the form of text, through systems that will send, store, process,  
3 and receive information and in which messages are held in storage until the addressee accesses  
4 them.

5           **(i)     Format:** “Format” means the internal structure of a file that defines the way the  
6 file is stored and used.  
7

8           **(j)     Keyword Search:** “Keyword Search” means a search of the text of Electronic  
9 Information for one or more words or sets of characters or numbers that are specified by a user.

10          **(k)     Load File:** “Load File” means a file that relates to a set of scanned images and  
11 indicates where individual pages belong together as documents. A load file may also contain data  
12 relevant to the individual documents (e.g., metadata or coded data).  
13

14          **(l)     Metadata:** “Metadata” means information about a particular data set or document  
15 that describes, among other things, how, when, and by whom it was created, accessed, modified,  
16 sent, and received, and how it is formatted.

17          **(m)     Native Format:** “Native Format” means the file structure of Electronic Information  
18 defined by the original creating application.

19          **(n)     Online Repository:** “Online Repository” means a secure database of documents  
20 that makes documents accessible, searchable, and reviewable via the Internet.  
21

22          **(o)     Parties or Party:** “Party” or “Parties” means each Party to this Litigation. The  
23 Parties in this action share significant overlap with the parties to the actions listed on Exhibit B to  
24 the Protective Order entered on August 31, 2017 (ECF No. 110), as modified on July 18, 2018  
25 (ECF No. 163), and nothing in this Order will restrict the Parties to this Litigation from working in  
26 concert to maximize the efficiency of discovery with any or all parties to the actions listed on  
27 Exhibit B of the Protective Order.  
28

1           (p)     **Producing Party**: “Producing Party” means a Party that produces Electronic  
2 Information.

3           (q)     **Production Media**: “Production Media” means documents on any readily  
4 accessible computer or electronic media the Parties may agree upon, including CD-ROM, DVD, or  
5 external hard drive (with standard PC-compatible interface).  
6

7           (r)     **Receiving Party**: “Receiving Party” means a Party to whom Electronic  
8 Information is produced.

9           (s)     **Relevant Electronic Information**: “Relevant Electronic Information”  
10 means Electronic Information that is material and necessary in prosecuting or defending this  
11 Litigation, within the meaning of Rules 26, 33, and 34 of the Federal Rules of Civil Procedure.  
12

13           (t)     **This Litigation**: This “Litigation” means the case captioned *Newmark Group, Inc.,*  
14 *et al v. Avison Young (Canada) Inc., et al.*, Case No. 2:15-cv-00531-RFB-EJY, which is currently  
15 pending in the United States District Court for the District of Nevada.

16           (u)     **TIFF**: “TIFF” (Tagged Image File Format) refers to a particular graphic-file format  
17 for storing bit-mapped images, with multiple compression formats and resolutions.

18           (v)     **Paper Discovery**: “Paper Discovery” means responsive documents and things  
19 under Rule 34 of the Federal Rules of Civil Procedure that were originally created in paper format  
20 and that may or may not have been converted into digital format.  
21

## 22     **2. SCOPE**

23           (a)     **General**: The procedures and protocols set forth in this Order will govern the  
24 production of Electronic Information in this Litigation.

25           (b)     **Paper Discovery**: Each Producing Party has an independent and separate  
26 obligation to produce Paper Discovery responsive to a Receiving Party’s discovery requests and  
27 agrees to produce Paper Discovery in TIFF format. Upon a request by the Receiving Party and a  
28

1 showing of good cause (e.g., problems with legibility or formatting), the Producing Party must  
2 make the original paper documents available for inspection at a mutually agreeable time and place.

3 (c) **Limitations:** This Order provides a general framework for producing Electronic  
4 Information. This Order does not establish any agreement as to either the temporal or subject-  
5 matter scope of discovery.  
6

7 (d) **Disputes:** The Parties will meet and confer to resolve any procedures or disputes  
8 arising under this Order. In the event the Parties cannot reach agreement on a disputed matter, the  
9 Parties will submit the matter to the Court in this Litigation.

### 10 3. **COST CONTAINMENT**

11 (a) **Objective:** The procedures in this Order pertaining to producing Electronic  
12 Information are subject to developing reasonable and appropriate strategies to minimize the cost  
13 and burden that may be associated with producing Data.  
14

15 (b) **Keyword Searches:** The Parties will use Keyword Searches using agreed-upon  
16 keywords specific to each Party.

### 17 4. **PRODUCTION**

18 (a) **Document-Production Format:** The following provisions will generally  
19 govern the production format and procedure for Electronic Information and are subject to the other  
20 provisions in the Order:  
21

22 (i) **Hard-Copy Documents.** The Producing Party will scan hard-copy documents  
23 to images, which will be produced as black-and-white, Group IV compression,  
24 single-page TIFF images, at not less than 300 dpi resolution. Color images will be  
25 produced only if necessary to understand the document, and all Parties reserve the  
26 right to produce the files in Native Format rather than by color images. The  
27 Producing Party will produce a delimited text file to accompany the TIFF images,  
28

1 which will indicate document breaks. If a document is more than one page, the  
2 unitization of the document and any attachments or affixed notes will be maintained  
3 as it existed in the original when creating the image file. Images will be saved into  
4 a unique sequentially numbered folder (i.e. 001, 002, 003), and each folder will not  
5 consist of more than 5,000 images. When producing TIFF image files, the Producing  
6 Party will also produce corresponding Optical Character Recognition (“OCR”) files  
7 as multi-page ASCII text (“TXT”) files whose file name is identical to the  
8 corresponding first TIFF image file of the corresponding images for a Document.  
9 The OCR files will be produced in a separate folder. Reasonable efforts will be used  
10 to scan the pages at or near their original size and to display Bates numbers and  
11 confidentiality designations without obscuring text. Physically oversized originals,  
12 however, may appear reduced or may be produced as hard-copy documents. To the  
13 extent a physically oversized document cannot be readily deciphered if scanned and  
14 reduced into a TIFF image, it will be produced as a hard-copy document, and a  
15 placeholder TIFF will be produced indicating the Bates number of the oversized  
16 hard-copy document and confidentiality designation if applicable. Hard-copy  
17 documents will be produced as maintained in the usual course of business, including  
18 maintaining, to the extent reasonably possible, attachments, notes, etc.

19  
20  
21  
22 (ii) Electronic Documents. Electronic documents may be deduplicated across  
23 custodians with all custodians of a document included in the All Custodian field as  
24 provided in Exhibit A. The Parties agree that, for hard-copy documents, they will  
25 populate the field with the term “Hard-Copy Document.” The electronic documents  
26 will be produced as black-and-white, Group IV compression, single-page TIFF  
27 images, with not less than 300 dpi resolution. The Producing Party will produce as  
28

1 native files Microsoft Excel spreadsheets, Microsoft PowerPoint files, and other  
2 electronic documents that cannot be converted to TIFF format in readily usable and  
3 legible format. Color images will be produced only if necessary to understand the  
4 Document, and all Parties reserve the right to produce the files in Native Format  
5 rather than by color images. The Parties will produce a delimited text file to  
6 accompany the TIFF images, which will indicate Document breaks. For any  
7 documents produced in a TIFF format that contain track changes, the images must  
8 be produced in a manner that displays all track changes and any associated notes or  
9 comments.  
10

11 A Producing Party will, to the extent the information is reasonably  
12 ascertainable and accessible, identify the Custodians and Sources from which each  
13 electronic document was harvested. To the extent email data is stored, or only  
14 accessible, in an archive system (e.g., archived email that will not be swept up during  
15 a pull of a given custodian's live email account), the Parties agree to search the  
16 archive system as part of any collections and productions. Archives, as that term is  
17 used in the preceding sentence, do not include back-up tapes.  
18

19 With each production of Documents, the Parties will produce an ASCII  
20 formatted DAT file, delimited as set forth in this Order, containing the extracted  
21 Metadata for each document and accompanied by an OPT file (the "Load Files").  
22 The Load Files will include the fields and content set forth in Exhibit A to this Order.  
23 The Load Files produced by the Producing Party will contain the standard  
24 Concordance delimiters. However, the Parties agree that a Party may request to  
25 receive additional Metadata upon a showing of good cause. The Producing Party  
26 will take reasonable steps to produce relevant, nonprivileged attachments to  
27  
28

1 electronic documents contemporaneously and in sequential order. In the harvesting  
2 of electronic documents, document relationships will be preserved. Related  
3 nonprivileged documents within a family will be produced, and any family  
4 documents containing privileged information that are withheld will be identified  
5 with a Bates-numbered document placeholder TIFF within the set of family  
6 documents. All Producing Parties will provide attachment-range information as  
7 provided in Exhibit A.  
8

9 For Documents that are redacted, the type of redaction (personal  
10 information; privileged information; nonresponsive information; nonrelevant,  
11 nonresponsive trade-secret information; or nonrelevant, nonresponsive confidential  
12 business information) will be noted in the Load File in the field "Redacted." The  
13 term "Redacted" will be reflected on the images to indicate where a redaction occurs  
14 as well as in the multipage text file containing OCR for searching purposes.  
15

16 (iii) Searchable Text. To the extent a document has extracted text, the Parties will  
17 produce a multipage text file for each produced document reflecting the full text that  
18 has been electronically extracted from the original, native electronic files  
19 ("Extracted Text"). The Extracted Text will be provided at the same time as the  
20 Load File and be placed in a separate folder. For redacted documents, instead of  
21 Extracted Text, OCR will be run on each document post-redaction and provided as  
22 a multipage text file.  
23

24 (b) **Production of Documents in Native Format**: After the initial production of  
25 electronic documents in TIFF image file format is complete, the Parties reserve the right to request  
26 the production of electronic documents in Native Format. A Party must make a showing of good  
27 cause (e.g., problems with legibility or formatting or a need for additional metadata) for producing  
28



1 the electronic documents in their Native Format, and the parties' right to seek cost-sharing for such  
2 requests is preserved. In the event a request is made for producing Native Format documents, the  
3 Parties will negotiate in good faith about the timing and method of the production. No image file  
4 or Native Format document will be intentionally manipulated to change how the source document  
5 would have appeared if printed out to a printer attached to a computer viewing the file. Documents  
6 produced in Native Format will be produced in the manner the files were maintained electronically  
7 in the ordinary course of business. A placeholder TIFF will be produced indicating the Bates  
8 number of the file and confidentiality designation if applicable. Files will be renamed to  
9 incorporate Bates number schema into the file name, followed by original document extension (e.g.,  
10 ".doc," ".xls," etc.). The Parties will produce as part of the Load File the original file name, the  
11 corresponding Bates number, and the associated hash value. If the production of databases other  
12 than a Microsoft Access database is requested, the Parties will meet and confer as to the propriety  
13 of the request and the method of production.

14  
15  
16 (c) **Appearance and Content:** Subject to any appropriate redaction, each document's  
17 electronic image will convey the same information and image as the original document. Documents  
18 that present imaging or formatting problems will be identified, and the Parties will meet and confer  
19 in an attempt to resolve any problems.

20  
21 (d) **Document Unitization:** If a document is more than one page, the unitization of the  
22 document and any attachments or affixed notes will be maintained as it existed in the original file  
23 or computer of the Producing Party. If unitization cannot be maintained, the original unitization  
24 will be noted, documented in a Load File or otherwise electronically tracked.

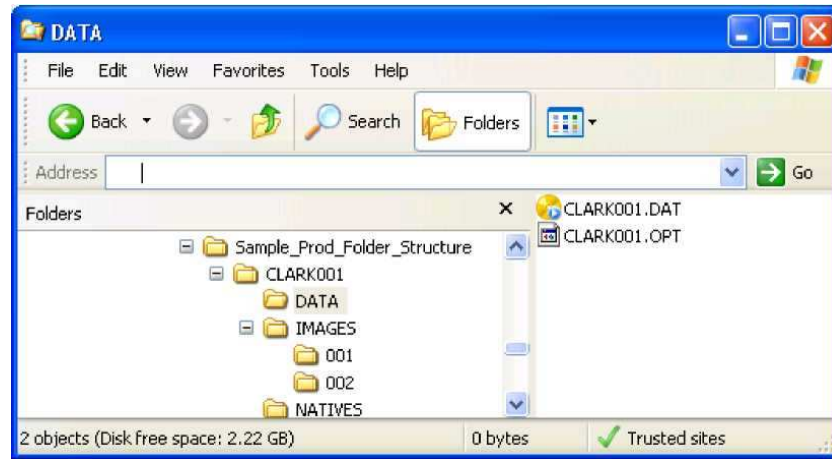
25 (e) **Color:** Documents containing color need not be originally produced in color. If an  
26 original document contains color necessary to understand the meaning or content of the document,  
27 however, the Producing Party will honor reasonable requests for either producing an original  
28

1 document for inspection and copying or producing a color image of the document. The Receiving  
2 Party will be responsible for the reasonable cost of color copying.

3 (f) **Document Numbering for TIFF Images:** Each page of a produced document,  
4 produced in TIFF file format will have a legible, unique Document Number electronically endorsed  
5 onto the image at a location that does not obliterate, conceal, or interfere with any information from  
6 the source document. The Document Number for each document will be created so as to identify  
7 the Producing Party and the Document Number. Each Party will have a unique identifying name.  
8 Each page of each production will have a unique number of up to seven digits. Any redacted page  
9 will also include the word “Redacted” endorsed on the TIFF image at the location of the  
10 redaction(s).  
11

12 (g) **Production Media:** The Producing Party will produce documents on any readily  
13 accessible computer or electronic media the Parties may agree upon, including CD-ROM, DVD,  
14 external hard drive (with standard PC-compatible interface or access to a secure Online Repository  
15 agreed upon by the Parties). Each piece of Production Media will be assigned a production number  
16 or other unique identifying label corresponding to the date of the production of documents on the  
17 Production Media as well as the sequence of the material in that production. An example of this  
18 convention is “Plaintiff Production March 1, 2006 PLTF 0000123–PLTF 0000456.” Production  
19 Media will include text referencing the case name and number. Further, any replacement  
20 Production Media will cross-reference the original Production Media and clearly identify that it is  
21 a replacement and cross-reference the document number range that is being replaced.  
22

23  
24 (i) **Load Files.** With each production, the Producing Party will provide a standard  
25 Concordance (.opt and .dat) delimiter Load File indicating the beginning and ending  
26 Bates Numbers of all Document families. The production material should be  
27 produced in the following folder structure:  
28



(h) **Decryption and Passwords:** To the extent that decryption or access passwords are necessary to unlock any Data in its Native Format, including but not limited to email passwords and file decryption passwords, the Parties will meet and confer to develop appropriate steps to allow access to the Data without compromising confidentiality, security, or proprietary interests.

(i) **Redaction:** For any file produced in Native Format that is redacted, the Parties will meet and confer with respect to suitable techniques and methods of redaction to preserve the integrity of the Data while protecting information subject to redaction.

(j) **Documents of Limited Accessibility:** If a Producing Party contends that any Electronic Information is of limited accessibility, that Party will identify the Data with reasonable particularity and will provide the requesting Party with its basis for declining to produce the Electronic Information. The Parties will negotiate in good faith concerning producing any Documents of Limited Accessibility.

If the Parties are unable to reach agreement, the Parties will submit any dispute to the Court and the Court will determine what burdens may be imposed upon the Producing or Receiving Parties in order to resolve the dispute and whether or to what extent the costs of the production will be borne by the Producing or Receiving Parties.

1     **5.     METADATA, REDACTION, LANGUAGE, AND COOPERATION**

2             **(a)     Metadata:** The Parties' intent is that when a request for Metadata from a file in  
3 Native Format is made in addition to what is required under Section 4(a)(ii) and Exhibit A, and  
4 production is agreed to or ordered, to the extent it exists and is available, all additional Metadata  
5 from that file in Native Format will be produced. The Parties reserve the right to challenge the  
6 reasonableness of a producing party's efforts to preserve and/or locate any missing Metadata.  
7

8             **(b)     English Language:** To the extent any Data exists in more than one language, the  
9 Data will be produced in English, if available. If no English version of a document is available, the  
10 Producing Party does not have an obligation to produce an English translation of a document.  
11

12            **(c)     Cooperation:** The Parties will, as necessary, meet and confer to exchange  
13 information regarding issues associated with any electronic production of Electronic Information.

14            **(d)     Variance:** Any practice or procedure set forth in this Order may be varied by  
15 written agreement of the Parties when the variance is deemed appropriate to facilitate the timely  
16 and economical exchange of Electronic Information.

17            **(e)     Duplicate Production Not Required:** A Party producing Electronic Information  
18 in electronic form need not produce the same document in paper format.  
19

20     **6.     TIMING OF ELECTRONIC DISCOVERY**

21            Any Party under an obligation to produce Electronic Information will commence producing  
22 the Electronic Information and proceed with producing the Electronic Information in a timely manner  
23 consistent with time considerations to be developed by the Parties.

24     **7.     CONFIDENTIAL INFORMATION & PRIVILEGE**

25            The Parties have entered into a separate Protective Order dated August 31, 2017, as  
26 modified on July 18, 2018 that governs the treatment of confidential material, including  
27 submitting confidential material to the Court and recourse for inadvertently producing  
28

1 confidential or privileged information. The Parties will enter into a separate agreement regarding  
2 the identification (including logging) and redaction of privileged documents.

3  
4 Dated: November 4, 2019

IT IS SO ORDERED:

5  
6   
7 U.S. MAGISTRATE JUDGE ELAYNA J. YOUCHAK

8  
9 **Order agreed to by:**

10 By: /s/ Tina B. Solis

By: /s/ Nathaniel J. Kritzer

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**EXHIBIT A**

**Production Load File Fields**

<b>FIELD</b>	<b>DESCRIPTION</b>	<b>ESI</b>	<b>Non-ESI (converted to Load Files)</b>
BEGBATES	Beginning Bates number assigned to each document. Format XXXXX00000001.	Y	Y
ENDBATES	Ending Bates number assigned to each document. Format XXXXX00000001.	Y	Y
BEGATTACH	Beginning Bates number assigned to the group of documents to which the parent document and any attachment documents are associated. Format XXXXX00000001.	Y	Y
ENDATTACH	Ending Bates number assigned to the group of documents to which the parent document and any attachment documents are associated. Format XXXXX00000001.	Y	Y
PARENT ID	Beginning Bates number of any parent document.	Y	Y
ATTACHMENT IDS	Beginning Bates number(s) of any attached document.	Y	Y
PAGE COUNT	Number of pages per document.	Y	Y
DATE CREATED	The date extracted from a field that contains the date a file was created. Formatted as MM/DD/YYYY.	Y	N
DATE LAST MODIFIED	The date extracted from a field that contains the date a file was last modified. Formatted as MM/DD/YYYY.	Y	N

<b>FIELD</b>	<b>DESCRIPTION</b>	<b>ESI</b>	<b>Non-ESI (converted to Load Files)</b>
DATE SENT	The date an email was sent. Formatted as MM/DD/YYYY.	Y	N
TIME SENT	The time an email was sent. Formatted as HH:MM:SS in Eastern military time.	Y	N
DATE RECEIVED	The date an email was received. Formatted as MM/DD/YYYY.	Y	N
TIME RECEIVED	The time an email was received. Formatted as HH:MM:SS in Eastern military time.	Y	N
RECORDTYPE	The type of document—Scan Paper; Email; Email Attachment; Loose Edoc.	Y	Y
FILENAME	The original filename of the electronic file.	Y	N
DOCTITLE	The title of an electronic document.	Y	N
DOCAUTHOR	The author of an electronic file.	Y	N
SUBJECT	The subject line of the email.	Y	N
FROM	The originator of the email message.	Y	N
RECIPIENT	The recipient(s) of an email.	Y	N
CC	Names of copied recipients of an email.	Y	N
BCC	Names of blind copied recipients of an email.	Y	N

FIELD	DESCRIPTION	ESI	Non-ESI (converted to Load Files)
ALL CUSTODIAN	Name of any individual, department, or server where the file was stored or kept (delimited with semicolon).	Y	Y
CUSTODIAN	Name of the individual(s), department, or server where the file was stored or kept.	Y	Y
NATIVE	Link to Native File.	Y	N
TEXTPATH	Link to Extracted Text or OCR Text File.	Y	Y
REDACTION	If a document has been redacted, indicates the type of redaction—Personal Information, Privilege, Nonresponsive.	Y	Y
CONFIDENTIAL	Confidentiality Designation.	Y	Y
PARENT DATE	Email sent date propagated to its attachments.	Y	N
MD5 HASH VALUE	An algorithm that is used to verify data integrity and uniqueness.	Y	N
DOCUMENT LAST PRINTED DATE	The date that the document was last printed.	Y	N



<b>FIELD</b>	<b>DESCRIPTION</b>	<b>ESI</b>	<b>Non-ESI (converted to Load Files)</b>
DOCUMENT LAST PRINTED TIME	The time that the document was last printed.	Y	N
DOCUMENT EDITING TIME	The amount of time spent editing the document.	Y	N
DOCUMENT COMPANY	The company to which the software used to create the document was licensed.	Y	N
DOCUMENT REVISION NUMBER	The version number of the document.	Y	N
MS AUTHOR	The Microsoft embedded “MS Author” value.	Y	N
MS COMPANY	The Microsoft embedded “MS Company” value.	Y	N
LAST MODIFIED BY	The Microsoft embedded person value who last modified a document.	Y	N
LAST PRINTED BY	The Microsoft embedded person value who last printed a document.	Y	N
LAST SAVED BY	The Microsoft embedded person value who last saved a document.	Y	N